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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**VIOLETTA HOANG, LIVIA HSIAO,
MICHAEL BLACKSBURG, and
MATTHEW HALL**, individually and on
behalf of a class of similarly situated
persons,

Plaintiffs,

vs.

REUNION.COM, INC., a California
corporation,

Defendant.

Case No. 08-CV-03518-MMC

**NOTICE OF WITHDRAWAL OF
SECOND AMENDED COMPLAINT AND
OF PLAINTIFFS' DECISION TO STAND
ON THE FIRST AMENDED
COMPLAINT WITHOUT FURTHER
AMENDMENT**

Plaintiffs hereby notify the Court that they withdraw their Second Amended Complaint ("SAC") filed on May 29, 2009 (Docket No. 74). This leaves the First Amended Complaint ("FAC") as the operative complaint in this action. Plaintiffs further notify the Court that they will not seek leave to amend further the FAC. Accordingly, Plaintiffs also withdraw the statement in their previously filed Supplemental Brief in Support of their Motion for Reconsideration that a Second Amended Complaint would include additional allegations that Defendant's conduct caused Plaintiffs to lose storage space in their inboxes and computers, as Plaintiffs had anticipated would be the case when they filed that Supplemental Brief.

This renders the Defendant's motion to dismiss the SAC (Docket No. 75) moot. Because the Court has already ruled that the FAC should be dismissed and has denied Plaintiffs' motion for reconsideration of that order (Docket Nos. 55 and 73 respectively), and Plaintiffs are hereby formally notifying the Court of their decision to stand on the FAC without further amendment, this case is now ripe for appellate review upon the entry of final judgment.¹

¹ Pursuant to Rule 11(c)(2) of the Federal Rules of Civil Procedure, Defendant served a draft motion for sanctions on Plaintiffs' counsel on June 26, 2009 contending, *inter alia*, that the additional allegations in the SAC were insufficient to establish that – in light of the previous orders of this Court – Plaintiffs had standing to assert their claims, or that their claims escape preemption by federal law. A critical aspect of the Defendant's draft motion is that Plaintiffs ultimately elected not to include additional allegations that Defendant's conduct caused Plaintiffs to lose storage space in their inboxes and computers, as Plaintiffs anticipated they would include when they filed their Supplemental Brief in Support of their Motion for Reconsideration. (Docket No. 66 at 2-3).

Without in any way conceding any of those substantive or procedural points, Plaintiffs have elected to exercise their rights under Rule 11(c)(2) to withdraw the SAC, and their previous position that they were prepared to include additional factual allegations of lost inbox storage space (and/or lost time to delete emails from inboxes), and will seek appellate review of the dismissal of the FAC. *Truesdell v. Southern California Permanente Medical Group*, 293 F.3d 1146, 1153 (9th Cir. 2002) (once a draft Rule 11 motion is served, a plaintiff enjoys a 21 day safe harbor period to "withdraw, amend, or disclaim the filing" and noting that plaintiffs' counsel in that case "could have affirmatively withdrawn the complaint or formally disclaimed any intention of filing an amended complaint while making clear that he was taking advantage of the safe-harbor period."); *Radcliffe v. Rainbow Construction Co.*, 254 F.3d 772, 788-789 (9th Cir. 2001) (the safe harbor period following service of a draft Rule 11 motion, as opposed to mere informal threats of sanctions, affords a party the opportunity to retract the challenged pleading without fear of sanctions).

1 Plaintiffs continue to respectfully disagree with this Court as to whether the FAC
2 should have been dismissed and Plaintiffs expressly reserve all rights of appeal from
3 the orders of this Court entered in this action.

4
5 Respectfully submitted,

6 DATED: July 1, 2009

SHAPIRO HABER & URMY, LLP

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8 By: s/ Todd S. Heyman

9 Todd S. Heyman

10 Attorneys for Plaintiffs
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22 Neither Plaintiffs nor their counsel believe that any of their pleadings were
23 inconsistent with their Rule 11 obligations and their actions as set forth herein cannot
24 and should not be construed to the contrary. The amendments to Rule 11 were
25 specifically designed to remedy the problem of a party being reluctant to withdraw a
26 contention out of concern that the withdrawal would appear to be reflecting a Rule 11
27 violation. See Advisory Notes to Rule 11, 1993 Amendments, Subdivisions (b) and (c)
28 ("Under the former rule, parties were reluctant to abandon a ... contention lest that be
viewed as evidence of a violation of Rule 11; under the revision, the timely withdrawal of
a contention will protect a party against a motion for sanctions.").

Plaintiffs have acted as set forth herein to avoid protracted Rule 11 related
litigation and to allow the merits based legal issues in this case to be decided by the
Court of Appeals.